

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII**

**In The Matter Of the Application Of  
HAWAIIAN ELECTRIC COMPANY, INC.**

**DOCKET NO. 03-0417**

**for approval to commit funds in excess of  
\$500,000 for Item Y48500, East Oahu  
Transmission Project.**

**MEMORANDUM IN RESPONSE TO  
LIFE OF THE LAND'S MOTION TO INTERVENE**

**AND**

**CERTIFICATE OF SERVICE**

PUBLIC UTILITIES  
COMMISSION

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FILED

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**MEMORANDUM IN RESPONSE TO  
LIFE OF THE LAND'S MOTION TO INTERVENE**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in response to the Motion to Intervene dated January 6, 2004 by Life of the Land ("LOL") ("LOL's Motion").

HECO does not oppose LOL's intervention in this docket, provided that LOL is not permitted to expand the scope of the proceeding or delay the proceeding, and LOL is required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (Hawaii Administrative Rules, Title 6, Chapter 61) ("Commission's Rules of Practice and Procedure").

**I. DISCUSSION**

**A. Introduction**

The Hawaii State Constitution provision and cases cited by LOL<sup>1</sup> do not grant LOL the status of a party to a Commission proceeding. Compare Hawaii Revised Statutes ("H.R.S.")

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<sup>1</sup> LOL's Motion, 26<sup>th</sup> and 27<sup>th</sup> pages. LOL's Motion does not contain page numbers. For ease of reference, HECO will refer to the first page following the cover sheet of LOL's Motion as the "1st page" and continuing such corresponding page references numerically until the forty-fifth page (which contains the signature page to the body of LOL's Motion).

§269-51 (granting the Consumer Advocate the right to participate in Commission proceedings).

Thus, LOL's Motion is governed by the Commission's Rules of Practice and Procedure regarding intervention.<sup>2</sup>

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a proceeding before the Commission "is not a matter of right but is a matter resting within the sound discretion of the Commission." In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should

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<sup>2</sup> LOL's Motion (34<sup>th</sup> page) refers to 3Point Consulting's notes of comments from a HECO representative at a June 26, 2003 community meeting regarding the East Oahu Transmission Project. As stated in the 3Point Consulting report, HECO stated that "it had offered evidence of need in its presentation, and that a more detailed account of need would be reserved for the P.U.C." 3Point Consulting's East Oahu Transmission Project, Report on Public Input Collected in June and July 2003, dated September 2003 (Exhibit 11 to HECO's application at 35). The HECO comments cited by LOL simply reflected that there would be an opportunity to intervene in that proceeding. In a subsequent meeting, the HECO representative responded to a question asking: "How can the public play a role in the PUC process?" The response, as summarized by 3Point Consulting, was that neither "Linda [Colburn, one of the facilitators] nor I can speak for the PUC but the typical process in an evidentiary hearing is that the PUC will allow the Consumer Advocate to represent views of the public and will entertain interveners." (3Point Consulting's notes of the July 7, 2003 community meeting, which were included in Appendix 5 to Exhibit 11 (on a compact disc).)

A more complete statement of HECO's position with respect to the determination of need by the Commission was set forth in the "Frequently Asked Questions" section of the web site that HECO established as part of its process of obtaining public input prior to selecting the proposed alternative for which approval is requested in HECO's application. In responding to the question of who will determine need, HECO stated that:

Ultimately, the Public Utilities Commission (PUC) will decide the issue of need in a formal, highly technical regulatory proceeding. In making its determination, the PUC will consider the data, studies and expert analyses presented by HECO, by the Consumer Advocate, and by other parties to the proceeding, as well as the PUC's own informed judgment as to the public interest.

In these quasi-judicial proceedings, the Consumer Advocate represents consumers of electric utility service, and has the power to obtain information through written data requests and verbal questions, and the right to present its own studies and expert analyses. Public interveners, whose interests are not adequately represented by other parties, may participate directly in the proceedings.

be admitted as a party (or as a participant) in a proceeding. Hawaii Administrative Rules (“H.A.R.”) §6-61-55 (d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993). In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s rules as stated in H.A.R. §6-61-1.

**B. HECO’s Position**

HECO does not oppose LOL’s intervention in this docket, provided that LOL is not permitted to expand the scope of the proceeding or delay the proceeding, and LOL is required to comply with the Commission’s Rules of Practice and Procedure (e.g., rules regarding format for pleadings and other documents, hearing and post-hearing procedures).

HECO’s position takes into account LOL’s representations that it will not seek to expand the scope of the proceeding or delay the proceeding:

[LOL] has a history of following PUC directives in previous dockets we have participated in . . . [LOL] ha[s] not asked for any time extensions, nor to expand the scope of dockets. In the absence of any prima facie evidence to the contrary, the PUC should accept our commitment to participate in good faith in this docket.

\* \* \*

Life of the Land will not obstruct[ ] or unreasonably delay[ ], or [ ] attempt[ ] to obstruct or unreasonably delay, discovery proceedings or other proceedings, that is or would be prejudicial to the interests of any opposing parties.

LOL’s Motion, 42<sup>nd</sup> through 43<sup>rd</sup> page.

LOL has requested a hearing on its Motion. LOL’s Motion, 28<sup>th</sup> page. In the event the Commission grants LOL’s Motion, however, it is not necessary to hold a hearing on LOL’s

Motion; provided that the existing parties to the docket (i.e., HECO and the Consumer Advocate) do not oppose LOL being permitted to intervene in this docket. (As stated above, HECO does not oppose LOL being permitted to intervene in this docket.)

**C. LOL's Allegations**

While HECO does not oppose the relief requested in LOL's Motion, there are a number of allegations in LOL's Motion that are inaccurate, incomplete, and/or not pertinent to this proceeding. In general, this is not the point in the proceeding for HECO to respond to such allegations, but a few warrant brief comment at this time. HECO's non-response to the remaining allegations should not be misconstrued as agreement with or acceptance of the accuracy of such allegations.

Much of LOL's Motion (3<sup>rd</sup> page through 15<sup>th</sup> page) simply recites the Hearing Officer's proposed findings of facts and conclusions of law that were submitted on February 8, 2002 to the Board of Land and Natural Resources ("BLNR") in the contested case proceeding initiated as a result of HECO's application for a Conservation District Use Permit ("CDUP") for a proposed partial underground/partial overhead (via Waahila Ridge) Kamoku-Pukele 138kV transmission line. The CDUP was necessary because a portion of the overhead alignment on Waahila Ridge was within the State Conservation District.

The Hearing Officer made proposed findings on the need for the project (and, in HECO's view, thereby exceeded his authority) despite his recognition at the prehearing conference for the CDUP contested case proceeding "that this [the BLNR] is not the Public Utilities Commission, and we are not going to turn this into [a] PUC proceeding or invade that jurisdiction of the Public Utilities Commission." (Transcript of August 29, 2001 Prehearing Conference, page 6.)

The Commission will make its own determination as to whether the proposed East Oahu

Transmission Project will provide facilities that are reasonably required to meet HECO's probable future requirements for utility purposes (i.e., whether the project is needed) based on the extensive expert testimony and other evidence submitted in this proceeding.

In addition, LOL discusses (LOL's Motion, 20<sup>th</sup> through 23<sup>rd</sup> pages) certain documents and recommendations from the 1990-1993 period concerning HECO's live line maintenance<sup>3</sup> practices. However, LOL does not refer to the extensive live line maintenance evaluation and written testimony that have been filed in this docket, which discuss these past recommendations and explain that, for HECO's 138kV system as it is currently configured, live line maintenance has, at best, very limited applicability, due to constraints imposed by climate, terrain, and facility conditions. (See, written direct testimony of Andrew H. Stewart, HECO T-5, pages 4 to 34, and Exhibit 7 to HECO's application which is titled "Evaluation of the Applicability and Practicability of Live Working (LW) Methods for Hawaiian Electric Company, Inc.'s (HECO) 138 kV Transmission System" ("Live Working Study").)

Instead, LOL questions the experience of Mr. Stewart in the live line maintenance area. LOL's Motion, 23<sup>rd</sup> page. LOL does not discuss pages 1 to 4 of Mr. Stewart's written direct testimony (HECO T-5), which address the extensive experience of the EDM International, Inc. project team that performed the Live Working Study (including Dr. George Gela of EPRISolutions, Inc., a recognized expert in live line maintenance), and Mr. Stewart's own extensive experience with transmission line maintenance (e.g., for the last 20 years he was actively involved in the development and implementation of various aspects of asset management programs directed at cost-effectively extending the useful life and optimizing the performance of overhead facilities, and he co-authored a new chapter for the Third Edition of the

EPRI AC Transmission Line Reference Book on the topic of “Considerations for Inspection, Maintainability and Refurbishment”<sup>4</sup>).

## II. CONCLUSION

Based on the foregoing, HECO does not oppose LOL’s intervention in this docket, provided that LOL is not permitted to expand the scope of the proceeding or delay the proceeding, and LOL is required to comply with the Commission’s Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, January 13, 2004.



THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.

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<sup>3</sup> Live line maintenance (generally referred to as “live working”) involves doing maintenance work on (and even replacing) distribution and transmission facilities without de-energizing the distribution and transmission lines.

<sup>4</sup> One subchapter, for which Dr. Gela will be the lead author, will be titled “Optimizing the Design for Effective Live Working”.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN RESPONSE TO LIFE OF THE LAND'S MOTION TO INTERVENE**, together with this Certificate of Service, by making personal delivery or by causing a copy hereof to be mailed, postage prepaid and properly addressed, to each such party:

Division of Consumer Advocacy (2)  
Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326  
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Henry Q Curtis  
Vice President for Consumer Issues  
Life of the Land  
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Honolulu, Hawaii 96817

DATED: Honolulu, Hawaii January 13, 2004.



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